HON'BLE THE CHIEF JUSTICE SRI G.S.SINGHVI

AND

HON'BLE SRI JUSTICE R.SUBHASH REDDY

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Writ Appeal No.1306 of 2005

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Between:

Smt. Shaik Asmath . . .Appellant

And

The Dist. Collector, Guntur, and others . . .Respondents

:: JUDGMENT ::

Counsel for the appellant : Sri M.Prabhakar Rao

Counsel for the respondent Nos.1 to 4: GP for Civil Supplies

Counsel for the respondent No.5 : Sri M.Sreerama Murthy

December 21st, 2005

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Per G.S.SINGHVI, CJ

Feeling aggrieved by order dated 23-06-2005 passed by the learned single Judge in Writ Petition No.2746 of 2004 whereby he refused to entertain the appellant's challenge to orders dated
09-10-2002 passed by Joint Collector, Guntur and order dated
09-01-2004 passed by District Collector, Guntur, in the matter of cancellation of her selection as fair price shop dealer in respect of Circle No.292, Sattenapalli Town, the appellant has filed this appeal under clause 15 of the Letters Patent.

For deciding the issue arising in the appeal, we may briefly notice the facts.

In response to notice dated 09-03-2002, issued by Revenue Divisional Officer, Guntur, (respondent No.3), the appellant and respondent No.5 applied for appointment as fair price shop dealer in respect of Circle No.292, Sattenapalli Mandal.
Smt. K.Ananthalakshmi also applied for appointment as a fair price shop dealer in respect of the said Circle. On a consideration of the qualifications of the applicants but without determining their comparative merit, respondent No.3 vide his order dated
20-04-2002 appointed the appellant as a fair price shop dealer against the notified vacancy on permanent basis. Respondent No.5 challenged that order by filing an appeal which was allowed by Joint Collector and Additional District Magistrate, Guntur, vide his order dated 09-10-2002. The appellate authority referred to the

guidelines issued by the Government of Andhra Pradesh vide G.O.Ms.No.198, dated 05-02-1996 and held that respondent No.5 (appellant before him) was entitled to preferential treatment because she was a resident of Ward No.19 where the shop was earlier located. The order of the appellate authority was confirmed by Collector and District Magistrate, Guntur, who dismissed the revision filed by the appellant. The learned single Judge dismissed the writ petition by observing that the selection of the appellant was not in conformity with the guidelines framed by the State Government.

We have heard learned counsel for the parties and perused the record. Admittedly, the notice issued by respondent No.3 for appointment of fair price shop dealer did not specify the particular ward in which the shop was to be located. Rather, the notice contained a stipulation that the shop would be for Circle No.292 of Sattenapalli, which comprises of Ward Nos.18, 19 and 20. In this view of the matter, the preferential clause contained in para 9 of the guidelines issued by the State Government vide G.O.Ms.No.198, dated 05-02-1996 could not have been made basis by the appellate authority i.e. Joint Collector, Guntur for cancelling the appointment of the appellant. Therefore, order dated
09-10-2002 passed by Joint Collector and Additional District Magistrate, Guntur cancelling the appointment of the appellant as fair price shop dealer as also order dated 09-01-2004 passed by Collector and District Magistrate, Guntur, confirming the order of cancellation, should have been set aside by the learned single Judge on the premise that the same had been passed on an erroneous assumption that respondent No.5 was entitled to preferential treatment.

Notwithstanding the aforementioned conclusion, we are not inclined to set aside the order of the learned single Judge because on a bare reading of order dated 20-04-2002 passed by respondent No.3, it becomes clear that he had selected appellant without any cogent reason which could distinguish her case vis-à-vis respondent No.5. It is neither the pleaded case of the appellant nor any material has been placed before us to show that she was more qualified than respondent No.5. Rather, the assertion of respondent No.5 is that she is more qualified. From order dated 20-04-2002, it is not discernible as to how the appellant was preferred over respondent No.5 in the matter of appointment of fair price shop dealer. Therefore, we are inclined to take the view that selection made by him was vitiated due to arbitrariness and violation of Article 14 of the Constitution.

In view of the above, we hold that even though the reason assigned by Joint Collector, Guntur and District Collector, Guntur, for nullifying the selection of appointment of the appellant as fair price shop dealer for Circle No.292, Sattenapalli Mandal is unsustainable, the nullification of her appointment does not call for interference by this Court.

For the reasons stated above, the appeal is dismissed. Respondent No.3 is directed to reconsider the application of appellant, respondent No.5 and Smt K.Ananthalakshmi and pass appropriate order in the matter of appointment of fair price shop dealer for Circle No.292, Sattenapalli Mandal, within a period of one month from the date of submission/receipt of the certified copy of this order. Till then, the appellant shall be entitled to continue to operate as fair price shop dealer for the above mentioned Circle.

G.S.SINGHVI, CJ

R.SUBHASH REDDY, J

21st DECEMBER, 2005.

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